

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIRST LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 327

FINAL READING

Introduced by Pahls, 31; McCoy, 39.

Read first time January 15, 2009

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to banking and finance; to amend sections
2 8-101.01, 8-112, 8-163, 8-209, 8-210, 8-602, 8-1001,
3 8-1001.01, and 45-190, Reissue Revised Statutes of
4 Nebraska, sections 8-1,140, 8-355, 21-17,115, 45-346.01,
5 45-348, and 45-922, Revised Statutes Cumulative
6 Supplement, 2008, and section 8-157.01, Reissue Revised
7 Statutes of Nebraska, as amended by section 1,
8 Legislative Bill 75, One Hundred First Legislature, First
9 Session, 2009; to require state-chartered banks to pledge
10 collateral as security for certain excess deposits as
11 prescribed; to change provisions relating to confidential
12 Department of Banking and Finance records; to change
13 provisions relating to automatic teller machine usage and

1 fees; to change provisions relating to bank dividends; to
2 revise powers of state-chartered banks, building and loan
3 associations, and credit unions; to change provisions
4 relating to pledges of securities under the Nebraska
5 Trust Company Act; to eliminate certain department fees;
6 to provide procedures for authorizing acquisitions of
7 licensees under the Nebraska Sale of Checks and Funds
8 Transmission Act and to require certain notices and
9 reports by licensees as prescribed; to redefine loan
10 broker; to change provisions relating to licensee duties
11 under the Nebraska Installment Sales Act; to change
12 provisions relating to a disciplinary action under the
13 Delayed Deposit Services Licensing Act; to harmonize
14 provisions; to provide operative dates; to repeal the
15 original sections; and to declare an emergency.

16 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 8-101.01, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 8-101.01 Sections 8-101 to 8-1,140 and section 2 of this
4 act shall be known and may be cited as the Nebraska Banking Act.

5 Sec. 2. (1) A state-chartered bank may deposit or have on
6 deposit funds of a fiduciary account controlled by the bank's trust
7 department unless prohibited by applicable law.

8 (2) To the extent that the funds are not insured
9 or guaranteed by the Federal Deposit Insurance Corporation, a
10 state-chartered bank shall set aside collateral as security under
11 the control of appropriate fiduciary officers and bank employees.
12 The bank shall place pledged assets of fiduciary accounts in the
13 joint custody or control of not fewer than two of the fiduciary
14 officers or employees of the bank designated for that purpose by
15 the board of directors. The bank may maintain the investments of
16 a fiduciary account off-premises if consistent with applicable law
17 and if the bank maintains adequate safeguards and controls. The
18 market value of the collateral shall at all times equal or exceed
19 the amount of the uninsured or unguaranteed fiduciary funds.

20 (3) A state-chartered bank may satisfy the collateral
21 requirements of this section with any of the following: (a)
22 Direct obligations of the United States or other obligations fully
23 guaranteed by the United States as to principal and interest; (b)
24 readily marketable securities of the classes in which banks, trust
25 companies, or other corporations exercising fiduciary powers are

1 permitted to invest fiduciary funds under applicable state law; and
2 (c) surety bonds, to the extent the surety bonds provide adequate
3 security, unless prohibited by applicable law.

4 (4) A state-chartered bank, acting in its fiduciary
5 capacity, may deposit funds of a fiduciary account that are
6 awaiting investment or distribution with an affiliated insured
7 depository institution unless prohibited by applicable law. The
8 bank may set aside collateral as security for a deposit by
9 or with an affiliate of fiduciary funds awaiting investment or
10 distribution, as it would if the deposit was made at the bank,
11 unless such action is prohibited by applicable law.

12 (5) Public funds deposited in and held by a
13 state-chartered bank are not subject to this section.

14 Sec. 3. Section 8-112, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 8-112 (1) The director shall keep, as records of his or
17 her office, proper books showing all acts, matters, and things done
18 under the jurisdiction of the department. Neither the director nor
19 anyone connected with the department shall in any instance disclose
20 the name of any depositor or debtor of any financial institution or
21 other entity regulated by the department or the amount of his or
22 her deposit or debt to anyone, except insofar as may be necessary
23 in the performance of his or her official duty, except that the
24 department may maintain a record of borrowers from the financial
25 institutions in this state and may give information concerning

1 the total liabilities of any such borrowers to any financial
2 institution owning obligations of such borrowers.

3 (2) Examination reports, investigation reports, and
4 documents and information relating to such reports are confidential
5 records of the department and may be released or disclosed only (a)
6 insofar as is necessary in the performance of the official duty of
7 the department or (b) pursuant to a properly issued subpoena to the
8 department and upon entry of a protective order from a court of
9 competent jurisdiction to protect and keep confidential the names
10 of borrowers or depositors or to protect the public interest.

11 (3) Examination reports, investigation reports, and
12 documents and information relating to such reports remain
13 confidential records of the department, even if such examination
14 reports, investigation reports, and documents and information
15 relating to such reports are transmitted to a financial institution
16 or other entity regulated by the department which is the subject of
17 such reports or documents and information, and may not be otherwise
18 released or disclosed by any such financial institution or other
19 entity regulated by the department.

20 (4) The restrictions listed in subsections (2) and (3) of
21 this section shall also apply to any representative or agent of the
22 financial institution or other entity regulated by the department.

23 (5) If examination reports, investigation reports, or
24 documents and information relating to such reports are subpoenaed
25 from the department, the party issuing the subpoena shall give

1 notice of the issuance of such subpoena at least three business
2 days in advance of the entry of a protective order to the financial
3 institution or other entity regulated by the department which
4 is the subject of such reports or documents and information,
5 unless the financial institution or other entity regulated by the
6 department is already a party to the underlying proceeding or
7 unless such notice is otherwise prohibited by law or by court
8 order.

9 Sec. 4. Section 8-157.01, Reissue Revised Statutes of
10 Nebraska, as amended by section 1, Legislative Bill 75, One Hundred
11 First Legislature, First Session, 2009, is amended to read:

12 8-157.01 (1) Any financial institution which has a main
13 chartered office or approved branch located in the State of
14 Nebraska may establish and maintain any number of automatic teller
15 machines at which all banking transactions, defined as receiving
16 deposits of every kind and nature and crediting such to customer
17 accounts, cashing checks and cash withdrawals, transfer of funds
18 from checking accounts to savings accounts, transfer of funds
19 from savings accounts to checking accounts, transfer of funds from
20 either checking accounts and savings accounts to accounts of other
21 customers, payment transfers from customer accounts into accounts
22 maintained by other customers of the financial institution or
23 the financial institution, including preauthorized draft authority,
24 preauthorized loans, and credit transactions, receiving payments
25 payable at the financial institution or otherwise, and account

1 balance inquiry, may be conducted. Any other transaction incidental
2 to the business of the financial institution or which will provide
3 a benefit to the financial institution's customers or the general
4 public may be conducted at an automatic teller machine upon
5 thirty days' prior written notice to the director if the director
6 does not object to the proposed other transaction within the
7 thirty-day notice period. Neither such automatic teller machines
8 nor the transactions conducted thereat shall be construed as the
9 establishment of a branch or as branch banking. Such automatic
10 teller machines shall be made available on a nondiscriminating
11 basis for use by customers of any financial institution which
12 has a main chartered office or approved branch located in the
13 State of Nebraska which becomes a user financial institution. It
14 shall not be deemed discrimination if an automatic teller machine
15 does not offer the same transaction services as other automatic
16 teller machines or if there are no fees charged between affiliate
17 financial institutions for the use of automatic teller machines.

18 (2) Any financial institution may become a user
19 financial institution by agreeing to pay the establishing financial
20 institution its automatic teller machine usage fee. Such agreement
21 shall be implied by the use of such automatic teller machines.
22 Nothing in this subsection shall prohibit a user financial
23 institution from agreeing to responsibilities and benefits which
24 might be contained in a standardized agreement. The establishing
25 financial institution or its designated data processing center

1 shall be responsible for transmitting transactions originating from
2 its automatic teller machine to a switch, but nothing contained
3 in this section shall be construed to require routing of all
4 transactions to a switch. All automatic teller machines must be
5 made available on a nondiscriminating basis, for use by customers
6 of any financial institution which has a main chartered office or
7 approved branch located in the State of Nebraska which becomes a
8 user financial institution, through methods, fees, and processes
9 that the establishing financial institution has provided for
10 switching transactions. The director, upon notice and after a
11 hearing, may terminate or suspend the use of any automatic teller
12 machine if he or she determines that it is not available on a
13 nondiscriminating basis for use by customers of any financial
14 institution which has a main chartered office or approved branch
15 located in the State of Nebraska which becomes a user financial
16 institution or that transactions originated by customers of user
17 financial institutions are not being routed to a switch or other
18 data processing centers. Nothing in this section may be construed
19 to prohibit nonbank employees from assisting in transactions
20 originated at the automatic teller machines, and such assistance
21 shall not be deemed to be engaging in the business of banking. Such
22 nonbank employees may be trained in the use of the automatic teller
23 machines by financial institution employees.

24 (3) An establishing financial institution shall not
25 be deemed to make an automatic teller machine available on a

1 nondiscriminating basis if, through personnel services offered,
2 advertising on or off the automatic teller machine's premises, or
3 otherwise, it discriminates in the use of the automatic teller
4 machine against any user financial institution which has a main
5 chartered office or approved branch located in the State of
6 Nebraska.

7 (4)(a) Any consumer initiating an electronic funds
8 transfer at an automatic teller machine for which an automatic
9 teller machine surcharge will be imposed shall receive notice in
10 accordance with the provisions of 15 U.S.C. 1693b(d)(3)(A) and (B),
11 as such section existed on January 1, 2004. Such notice shall (i)
12 be posted in a prominent and conspicuous location on or at the
13 automatic teller machine at which the electronic funds transfer is
14 initiated by the consumer and (ii) appear on the screen of the
15 automatic teller machine or appear on a paper notice issued from
16 such machine after the transaction is initiated and before the
17 consumer is irrevocably committed to completing the transaction.

18 (b) Subdivision (a)(ii) of this subsection shall not
19 apply until January 1, 2005, to any automatic teller machine that
20 lacks the technical capability to disclose the notice on the screen
21 or to issue a paper notice after the transaction is initiated
22 and before the consumer is irrevocably committed to completing the
23 transaction.

24 (5) A point-of-sale terminal may be established at any
25 point within this state. A financial institution may contract with

1 a seller of goods and services or any other third party for
2 the operation of point-of-sale terminals. A point-of-sale terminal
3 shall be made available on a nondiscriminating basis for use by
4 customers of any financial institution which has a main chartered
5 office or approved branch located in the State of Nebraska which
6 becomes a user financial institution. Nothing in this subsection
7 shall prohibit payment of fees to a financial institution which
8 issues an access device used to initiate electronic funds transfer
9 transactions at a point-of-sale terminal.

10 (6) A seller of goods and services or any other third
11 party on whose premises one or more point-of-sale terminals are
12 established shall not be, solely by virtue of such establishment,
13 a financial institution and shall not be subject to the
14 laws governing, or other requirements imposed on, financial
15 institutions, except for the requirement that it faithfully
16 perform its obligations in connection with any transaction
17 originated at any point-of-sale terminal on its premises. The
18 acquiring financial institution shall be responsible for compliance
19 with all applicable standards, rules, and regulations governing
20 point-of-sale transactions.

21 (7) Any financial institution, upon a request of the
22 director, shall file with the director a current listing of all
23 point-of-sale terminals established by the financial institution
24 within this state. For purposes of this subsection, point-of-sale
25 terminal shall include a group of one or more of such terminals

1 established at a single business location. Such listing shall
2 contain any reasonable descriptive information pertaining to the
3 point-of-sale terminal as required by the director. Neither the
4 establishment of such point-of-sale terminal nor any transactions
5 conducted thereat shall be construed as the establishment of
6 a branch or as branch banking. Following establishment of a
7 point-of-sale terminal, the director, upon notice and after a
8 hearing, may terminate or suspend the use of such point-of-sale
9 terminal if he or she determines that it is not made available on
10 a nondiscriminating basis for use by customers of any financial
11 institution which has a main chartered office or approved branch
12 located in the State of Nebraska which becomes a user financial
13 institution, that the necessary information is not on file with
14 the director, or that transactions originated by customers of
15 user financial institutions are not being routed to a switch
16 or other data processing center. Nothing in this section shall
17 be construed to prohibit nonbank employees from assisting in
18 transactions originated at the point-of-sale terminals, and such
19 assistance shall not be deemed to be engaging in the business of
20 banking.

- 21 (8) Transactions at point-of-sale terminals may include:
- 22 (a) Check guarantees;
- 23 (b) Account balance inquiries;
- 24 (c) Transfers of funds from a customer's account for
- 25 payment to a seller's account for goods and services on whose

1 premises the point-of-sale terminal is located in payment for the
2 goods and services;

3 (d) Cash withdrawals by a customer from the customer's
4 account or accounts;

5 (e) Transfers between accounts of the same customers at
6 the same financial institution; and

7 (f) Such other transactions as the director, upon
8 application, notice, and hearing, may approve.

9 (9)(a) Automatic teller machines may be established and
10 maintained by a financial institution which has a main chartered
11 office or approved branch located in the State of Nebraska, by
12 a group of two or more of such financial institutions, or by a
13 combination of such financial institution or financial institutions
14 and a third party.

15 (b) Point-of-sale terminals may be established and
16 maintained by a financial institution which has a main chartered
17 office or approved branch located in the State of Nebraska, by
18 a group of two or more of such financial institutions, or by a
19 combination of such financial institutions and a third party. No
20 one, through personnel services offered, advertising on or off the
21 point-of-sale terminal premises, or otherwise, may discriminate
22 in the use of the point-of-sale terminal against any other user
23 financial institution.

24 (10) All financial institutions shall be given an equal
25 opportunity for the use of and access to a switch, and no

1 discrimination shall exist or preferential treatment be given in
2 either the operation of such switch or the charges for use thereof.
3 The operation of such switch shall be with the approval of the
4 director. Approval of such switch shall be given by the director
5 when he or she determines that its design and operation are such
6 as to provide access thereto and use thereof by any financial
7 institution without discrimination as to access or cost of its use.
8 Any switch established in Nebraska and approved by the director
9 prior to January 1, 1993, shall be deemed to be approved for
10 purposes of this section.

11 (11) Use of an automatic teller machine or a
12 point-of-sale terminal through access to a switch and use of
13 any switch shall be made available on a nondiscriminating basis
14 to any financial institution. A financial institution shall only
15 be permitted use of the switch if the financial institution
16 conforms to reasonable technical operating standards which have
17 been established by the switch.

18 (12) To assure maximum safety and security against
19 malfunction, fraud, theft, and other accidents or abuses and
20 to assure that all such access devices will have the capability
21 of activating all automatic teller machines and point-of-sale
22 terminals established in this state, no automatic teller machine
23 or point-of-sale terminal shall accept an access device which
24 does not conform to such specifications as are generally accepted.
25 No automatic teller machine or point-of-sale terminal shall be

1 established or operated which does not accept an access device
2 which conforms with such specifications.

3 An automatic teller machine shall bear a logo type or
4 other identification symbol designed to advise customers that
5 the automatic teller machine may be activated by any access
6 device which complies with the generally accepted specifications.
7 A point-of-sale terminal shall either bear or the premises on
8 which the point-of-sale terminal is established shall contain
9 a visible logo type or other identification symbol designed to
10 advise customers that the point-of-sale terminal may be activated
11 by any access device which complies with the generally accepted
12 specifications. An automatic teller machine or point-of-sale
13 terminal may also bear, at the option of the establishing or
14 acquiring financial institution, any of the following:

15 (a) The names of all individual financial institutions
16 using such automatic teller machines or point-of-sale terminals
17 in alphabetical order, except that the establishing or acquiring
18 financial institution may be listed first, and in a uniform
19 typeface, size, and color; or

20 (b) The logo type or symbol of any association,
21 corporation, or other entity or organization formed by one or more
22 of the financial institutions using such automatic teller machines
23 or point-of-sale terminals.

24 (13) If the director, upon notice and hearing, determines
25 at any time that the design or operation of a switch or provision

1 for use thereof does discriminate against any financial institution
2 in providing access thereto and use thereof either through access
3 thereto or by virtue of the cost of its use, he or she may revoke
4 his or her approval of such switch operation and immediately order
5 the discontinuance of the operation of such switch.

6 (14) If it is determined by the director, after notice
7 and hearing, that discrimination against any financial institution
8 has taken place, that one financial institution has been preferred
9 over another, or that any financial institution or person has not
10 complied with any of the provisions of this section, he or she
11 shall immediately issue a cease and desist order or an order for
12 compliance within ten days after the date of the order, and upon
13 noncompliance with such order, the offending financial institution
14 shall be subject to sections 8-1,134 to 8-1,139 and to having the
15 privileges granted in this section revoked.

16 (15) For purposes of this section:

17 (a) Access means the ability to utilize an automatic
18 teller machine or a point-of-sale terminal to conduct permitted
19 banking transactions or purchase goods and services electronically;

20 (b) Access device means a code, a transaction card,
21 or any other means of access to a customer's account, or any
22 combination thereof, that may be used by a customer for the purpose
23 of initiating an electronic funds transfer at an automatic teller
24 machine or a point-of-sale terminal;

25 (c) Account means a checking account, a savings account,

1 a share account, or any other customer asset account held by a
2 financial institution. Such an account may also include a line of
3 credit which a financial institution has agreed to extend to its
4 customer;

5 (d) Acquiring financial institution means any financial
6 institution establishing a point-of-sale terminal;

7 (e) Affiliate financial institution means any financial
8 institution which is a subsidiary of the same bank holding company;

9 (f) Electronic funds transfer means any transfer of
10 funds, other than a transaction originated by check, draft, or
11 similar paper instrument, that is initiated through a point-of-sale
12 terminal, an automatic teller machine, or a personal terminal for
13 the purpose of ordering, instructing, or authorizing a financial
14 institution to debit or credit an account;

15 (g) Establishing financial institution means any
16 financial institution establishing an automatic teller machine
17 which has a main chartered office or approved branch located in
18 the State of Nebraska;

19 (h) Financial institution means a state-chartered
20 or federally chartered bank, savings bank, building and loan
21 association, savings and loan association, or credit union, or a
22 subsidiary of any such entity;

23 (i) Foreign financial institution means a financial
24 institution located outside the United States;

25 (j) Personal identification number means a combination

1 of numerals or letters selected for a customer of a financial
2 institution, a merchant, or any other third party which is used in
3 conjunction with an access device to initiate an electronic funds
4 transfer transaction;

5 (k) Personal terminal means a personal computer and
6 telephone, wherever located, operated by a customer of a financial
7 institution for the purpose of initiating a transaction affecting
8 an account of the customer; and

9 (l) User financial institution means any financial
10 institution which desires to avail itself of and provide its
11 customers with automatic teller machine or point-of-sale terminal
12 services.

13 (16) Nothing in this section prohibits ordinary
14 clearinghouse transactions between financial institutions.

15 (17) Nothing in this section requires any federally
16 chartered establishing financial institution to obtain the approval
17 of the director for the establishment of any automatic teller
18 machine.

19 (18) Nothing in this section shall prevent any financial
20 institution which has a main chartered office or an approved
21 branch located in the State of Nebraska from participating
22 in a national automatic teller machine program to allow its
23 customers to use automatic teller machines located outside of
24 the State of Nebraska which are established by out-of-state
25 financial institutions or foreign financial institutions or to

1 allow customers of out-of-state financial institutions or foreign
2 financial institutions to use its automatic teller machines
3 located in the State of Nebraska. Such participation and any
4 automatic teller machine usage fees charged or received pursuant
5 to the national automatic teller machine program or usage fees
6 charged for the use of its automatic teller machines by customers
7 of out-of-state financial institutions or foreign financial
8 institutions shall not be considered for purposes of determining
9 if an automatic teller machine located in the State of Nebraska
10 has been made available on a nondiscriminating basis for use by
11 customers of any financial institution which has a main chartered
12 office or approved branch located in the State of Nebraska which
13 becomes a user financial institution.

14 (19) An agreement to operate or share an automatic teller
15 machine may not prohibit, limit, or restrict the right of the
16 operator or owner of the automatic teller machine to charge a
17 customer conducting a transaction using an account from a foreign
18 financial institution an access fee or surcharge not otherwise
19 prohibited under state or federal law.

20 Sec. 5. Section 8-163, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 8-163 No bank shall withdraw or permit to be withdrawn,
23 either in the form of dividends or otherwise, any part of its
24 capital or surplus without the written permission of the director.
25 If losses have at any time been sustained equal to or exceeding

1 the undivided profits on hand, no dividends shall be made without
2 the written permission of the director. No dividend shall be made
3 by any bank in an amount greater than the net profits on hand
4 without the written permission of the director. As used in this
5 section, net profits on hand ~~shall mean~~ means the remainder of all
6 earnings from current operations plus actual recoveries on loans
7 and investments and other assets after deducting from the total
8 thereof all current operating expenses, losses, and bad debts,
9 accrued dividends on preferred stock, if any, and federal and
10 state taxes, for the present and two immediately preceding calendar
11 years.

12 Sec. 6. Section 8-1,140, Revised Statutes Cumulative
13 Supplement, 2008, is amended to read:

14 8-1,140 Notwithstanding any of the other provisions of
15 the Nebraska Banking Act or any other Nebraska statute, any bank
16 incorporated under the laws of this state and organized under
17 the provisions of the act, or under the laws of this state as
18 they existed prior to May 9, 1933, shall directly, or indirectly
19 through a subsidiary or subsidiaries, have all the rights, powers,
20 privileges, benefits, and immunities which may be exercised as of
21 ~~March 20, 2008,~~ the operative date of this section, by a federally
22 chartered bank doing business in Nebraska, including the exercise
23 of all powers and activities that are permitted for a financial
24 subsidiary of a federally chartered bank. Such rights, powers,
25 privileges, benefits, and immunities shall not relieve such bank

1 from payment of state taxes assessed under any applicable laws of
2 this state.

3 Sec. 7. Section 8-209, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 8-209 (1) Any corporation organized to do business as
6 a trust company under the Nebraska Trust Company Act shall make
7 a pledge with the Department of Banking and Finance of approved
8 securities ~~in the amount of one hundred thousand dollars in par~~
9 ~~value.~~

10 (2) The amount of securities required to be pledged shall
11 be based on the market value of trust assets held by the trust
12 company as follows:

13 (a) Trust companies with trust assets with a market value
14 of less than twenty-five million dollars shall pledge securities in
15 the amount of one hundred thousand dollars in par value;

16 (b) Trust companies with trust assets with a market value
17 of at least twenty-five million dollars but less than two hundred
18 fifty million dollars shall pledge securities in the amount of two
19 hundred thousand dollars in par value;

20 (c) Trust companies with trust assets with a market value
21 of at least two hundred fifty million dollars but less than two
22 billion five hundred million dollars shall pledge securities in the
23 amount of three hundred thousand dollars in par value;

24 (d) Trust companies with trust assets with a market value
25 of at least two billion five hundred million dollars but less than

1 five billion dollars shall pledge securities in the amount of four
2 hundred thousand dollars in par value; and

3 (e) Trust companies with trust assets with a market value
4 of five billion dollars or more shall pledge securities in the
5 amount of five hundred thousand dollars in par value.

6 (3) A trust company shall determine the market value
7 of its trust assets at the end of each calendar year. If such
8 valuation shows that the pledge of securities is less than is
9 required by subsection (2) of this section, the trust company shall
10 increase the amount of the securities pledged with the department
11 within sixty days following the end of the calendar year.

12 (4) If at any time the market value of pledged assets is
13 determined to have depreciated to less than ninety percent of par
14 value or the trust company has trust funds deposited with itself
15 or its supporting commercial bank in excess of those deposits
16 referred to by section 8-212, the Director of Banking and Finance
17 may require additional pledges in amounts deemed necessary to fully
18 secure pledging requirements or excessive trust fund depository
19 balances.

20 (5) Any national bank authorized by the Office of the
21 Comptroller of the Currency or the Board of Governors of the
22 Federal Reserve System to act in a fiduciary capacity in this
23 state, any federal savings association authorized by the Director
24 of the Office of Thrift Supervision to act in a fiduciary capacity
25 in this state, any federally chartered trust company, and any

1 out-of-state trust company authorized under the Interstate Trust
2 Company Office Act shall make similar pledges with the department,
3 and all such deposits of national banks held by the department
4 shall be considered as having been lawfully so pledged and subject
5 to the Nebraska Trust Company Act.

6 Sec. 8. Section 8-210, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 8-210 ~~Such securities~~ Securities pledged pursuant to
9 section 8-209 shall consist of any securities which constitute
10 a legal investment for the trust company except for bills of
11 exchange, notes, mortgages, banker's acceptances, or certificates
12 of deposit. State, county, municipal, and corporate bond
13 issues must be of investment quality and be rated in the
14 three top categories of investment by at least one nationally
15 recognized rating service, except that all issues of counties and
16 municipalities of Nebraska shall be acceptable.

17 Such securities shall not be accepted for purpose of
18 pledge at a rate above par value and if their market value is less
19 than par value they shall not be accepted for such purpose above
20 their actual market value. The safekeeping of such securities and
21 all other expenses incidental to the pledging of such securities
22 shall be at the expense of the trust company.

23 Sec. 9. Section 8-355, Revised Statutes Cumulative
24 Supplement, 2008, is amended to read:

25 8-355 Notwithstanding any of the provisions of Chapter

1 8, article 3, or any other Nebraska statute, except as provided
2 in section 8-345.02, any association incorporated under the laws
3 of the State of Nebraska and organized under the provisions
4 of such article shall have all the rights, powers, privileges,
5 benefits, and immunities which may be exercised as of ~~March 20,~~
6 ~~2008,~~ the operative date of this section, by a federal savings
7 and loan association doing business in Nebraska. Such rights,
8 powers, privileges, benefits, and immunities shall not relieve
9 such association from payment of state taxes assessed under any
10 applicable laws of this state.

11 Sec. 10. Section 8-602, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 8-602 The Director of Banking and Finance shall charge
14 and collect fees for certain services rendered by the Department of
15 Banking and Finance according to the following schedule:

16 (1) For filing and examining articles of incorporation,
17 articles of association, and bylaws, except credit unions, one
18 hundred dollars, and for credit unions, fifty dollars;

19 (2) For filing and examining an amendment to articles of
20 incorporation, articles of association, and bylaws, except credit
21 unions, fifty dollars, and for credit unions, fifteen dollars;

22 (3) For issuing to banks, credit card banks, trust
23 companies, and building and loan associations a charter, authority,
24 or license to do business in this state, a sum which shall be
25 determined on the basis of one dollar and fifty cents for each one

1 thousand dollars of authorized capital, except that the minimum fee
2 in each case shall be two hundred twenty-five dollars;

3 (4) For issuing an executive officer's or loan officer's
4 license, fifty dollars at the time of the initial license and
5 fifteen dollars on or before January 15 each year thereafter,
6 except credit unions for which the fee shall be twenty-five dollars
7 at the time of the initial license and fifteen dollars on or before
8 January 15 each year thereafter;

9 (5) For affixing certificate and seal, five dollars;

10 ~~(6) For making a photostatic copy of instruments,~~
11 ~~documents, or any other departmental records and for providing a~~
12 ~~computer-generated document, one dollar and fifty cents per page,~~

13 ~~(7) (6)~~ For making substitution of securities held by it
14 and issuing a receipt, fifteen dollars;

15 ~~(8) (7)~~ For issuing a certificate of approval to a credit
16 union, ten dollars;

17 ~~(9) (8)~~ For investigating the applications required
18 by sections 8-120 and 8-331 and the documents required by
19 section 8-201, the cost of such examination, investigation, and
20 inspection, including all legal expenses and the cost of any
21 hearing transcript, with a minimum fee under (a) sections 8-120
22 and 8-2402 of two thousand five hundred dollars, (b) section 8-331
23 of two thousand dollars, and (c) section 8-201 of one thousand
24 dollars. The department may require the applicant to procure and
25 give a surety bond in such principal amount as the department may

1 determine and conditioned for the payment of the fees provided in
2 this subdivision;

3 ~~(10)~~ (9) For registering a statement of intention to
4 engage in the business of making personal loans pursuant to section
5 8-816, fifty dollars;

6 ~~(11)~~ (10) For the handling of pledged securities as
7 provided in sections 8-210 and 8-1006, at the time of the initial
8 deposit of such securities, one dollar and fifty cents for each
9 thousand dollars of securities deposited and a like amount on or
10 before January 15 each year thereafter. The fees shall be paid by
11 the company, national bank, federal savings association, federally
12 chartered trust company, out-of-state trust company authorized
13 under the Interstate Trust Company Office Act, or state-chartered
14 bank pledging the securities;

15 ~~(12)~~ (11) For investigating an application to move its
16 location within the city or village limits of its original license
17 or charter for banks, trust companies, and building and loan
18 associations, two hundred fifty dollars;

19 ~~(13)~~ (12) For investigating an application under
20 subdivision (6) of section 8-115.01, five hundred dollars;

21 ~~(14)~~ (13) For investigating an application for approval
22 to establish or acquire a branch or to establish a mobile branch
23 pursuant to section 8-157, two hundred fifty dollars;

24 ~~(15)~~ (14) For investigating a notice of acquisition
25 of control under subsection (1) of section 8-1502, five hundred

1 dollars;

2 ~~(16)~~ (15) For investigating an application for a
3 cross-industry merger under section 8-1510, five hundred dollars;

4 ~~(17)~~ (16) For investigating an application for a merger
5 of two state banks or a merger of a state bank and a national
6 bank in which the state bank is the surviving entity, five hundred
7 dollars;

8 ~~(18)~~ (17) For investigating an application or a notice to
9 establish a branch trust office, five hundred dollars;

10 ~~(19)~~ (18) For investigating an application or a notice to
11 establish a representative trust office, five hundred dollars;

12 ~~(20)~~ (19) For investigating an application to establish
13 a credit union branch under section 21-1725.01, two hundred fifty
14 dollars; and

15 ~~(21)~~ (20) For investigating an applicant under section
16 8-1513, five thousand dollars.

17 Sec. 11. Section 8-1001, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 8-1001 For purposes of the Nebraska Sale of Checks and
20 Funds Transmission Act, unless the context otherwise requires:

21 (1) Person means any individual, partnership, limited
22 liability company, association, joint-stock association, trust, or
23 corporation, but does not include the United States Government or
24 the government of the State of Nebraska;

25 (2) Licensee means any person duly licensed pursuant to

1 the act;

2 (3) Check means any check, draft, money order, personal
3 money order, or other instrument, order, or instruction for the
4 transmission or payment of money;

5 (4) Personal money order means any instrument for the
6 transmission or payment of money in relation to which the purchaser
7 or remitter appoints or purports to appoint the seller thereof as
8 his or her agent for the receipt, transmission, or handling of
9 money, whether such instrument is signed by the seller, by the
10 purchaser or remitter, or by some other person;

11 (5) Director means the Director of Banking and Finance;

12 (6) Financial institution has the same meaning as in
13 section 8-101; and

14 (7) Transmission means a transfer by oral, written, or
15 electronic means or instruction; ~~and-~~

16 (8) Control means the power, directly or indirectly, to
17 direct the management or policies of a licensee, whether through
18 ownership of securities, by contract, or otherwise. Any person
19 who (a) has the power to elect a majority of executive officers,
20 managers, directors, trustees, or other persons exercising
21 managerial authority of a licensee or any person in control of a
22 licensee, (b) directly or indirectly has the right to vote ten
23 percent or more of a class of voting security or has the power to
24 sell or direct the sale of ten percent or more of a class of voting
25 securities, (c) in the case of a limited liability company, is a

1 managing member, or (d) in the case of a partnership, has the right
2 to receive, upon dissolution, or has contributed, ten percent or
3 more of the capital, is presumed to control that licensee.

4 Sec. 12. Section 8-1001.01, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 8-1001.01 Sections 8-1001 to 8-1017 and sections 13 and
7 14 of this act shall be known and may be cited as the Nebraska Sale
8 of Checks and Funds Transmission Act.

9 Sec. 13. (1) No person acting personally or as an agent
10 shall acquire control of any licensee under the Nebraska Sale of
11 Checks and Funds Transmission Act without first giving thirty days'
12 notice to the director on forms prescribed by the director of such
13 proposed acquisition.

14 (2) The director, upon receipt of such notice, shall act
15 upon it within thirty days, and unless he or she disapproves the
16 proposed acquisition within that period of time, the acquisition
17 shall become effective on the thirty-first day after receipt
18 without the director's approval, except that the director may
19 extend the thirty-day period an additional thirty days if,
20 in his or her judgment, any material information submitted is
21 substantially inaccurate or the acquiring person has not furnished
22 all the information required by the director.

23 (3) An acquisition may be made prior to the expiration of
24 the disapproval period if the director issues written notice of his
25 or her intent not to disapprove the action.

1 (4) (a) The director may disapprove any proposed
2 acquisition if:

3 (i) The financial condition of any acquiring person is
4 such as might jeopardize the financial stability of the acquired
5 licensee;

6 (ii) The business experience, character, and general
7 fitness of any acquiring person or of any of the proposed
8 management personnel indicate that the acquired licensee would
9 not be operated honestly, carefully, or efficiently; or

10 (iii) Any acquiring person neglects, fails, or refuses
11 to furnish all information required by the director. The director
12 may require that any acquiring person comply with the application
13 requirements of section 8-1005.

14 (b) The director shall notify the acquiring person in
15 writing of disapproval of the acquisition. The notice shall provide
16 a statement of the basis for the disapproval.

17 (c) Within fifteen business days after receipt of written
18 notice of disapproval, the acquiring person may request a hearing
19 on the proposed acquisition in accordance with the Administrative
20 Procedure Act and rules and regulations of the Department of
21 Banking and Finance. Following such hearing, the director shall, by
22 order, approve or disapprove the proposed acquisition on the basis
23 of the record made at the hearing.

24 Sec. 14. (1) A licensee shall file notice with the
25 director within thirty calendar days of any material changes in

1 information provided in a licensee's application as prescribed by
2 the director.

3 (2) A licensee shall file a report with the director
4 within five business days after the licensee has reason to know of
5 the occurrence of any of the following events:

6 (a) The filing of a petition by or against the licensee
7 under any bankruptcy law of the United States for bankruptcy or
8 reorganization;

9 (b) The filing of a petition by or against the licensee
10 for receivership, the commencement of any other judicial or
11 administrative proceeding for its dissolution or reorganization,
12 or the making of a general assignment for the benefit of its
13 creditors;

14 (c) The commencement of a proceeding to revoke or suspend
15 the licensee's license in a state or country in which the licensee
16 engages in business or is licensed;

17 (d) The cancellation or other impairment of the
18 licensee's bond or other security;

19 (e) A charge or conviction of the licensee or of an
20 executive officer, manager, or director of, or person in control
21 of, the licensee for a felony; or

22 (f) A charge or conviction of an authorized agent for a
23 felony.

24 Sec. 15. Section 21-17,115, Revised Statutes Cumulative
25 Supplement, 2008, is amended to read:

1 21-17,115 Notwithstanding any of the other provisions of
2 the Credit Union Act or any other Nebraska statute, any credit
3 union incorporated under the laws of the State of Nebraska and
4 organized under the provisions of the act shall have all the
5 rights, powers, privileges, benefits, and immunities which may
6 be exercised as of ~~March 20, 2008,~~ the operative date of this
7 section, by a federal credit union doing business in Nebraska on
8 the condition that such rights, powers, privileges, benefits, and
9 immunities shall not relieve such credit union from payment of
10 state taxes assessed under any applicable laws of this state.

11 Sec. 16. Section 45-190, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 45-190 For purposes of sections 45-189 to 45-191.11,
14 unless the context otherwise requires:

15 (1) Advance fee means any fee, deposit, or consideration
16 which is assessed or collected, prior to the closing of a loan,
17 by a loan broker and includes, but is not limited to, any money
18 assessed or collected for processing, appraisals, credit checks,
19 consultations, or expenses;

20 (2) Borrower means a person obtaining or desiring to
21 obtain a loan of money;

22 (3) Department means the Department of Banking and
23 Finance;

24 (4) Director means the Director of Banking and Finance;

25 (5) Loan broker means any person, except any bank,

1 trust company, savings and loan association or subsidiary of a
2 savings and loan association, building and loan association, credit
3 union, licensed or registered mortgage banker, Federal Housing
4 Administration or United States Department of Veterans Affairs
5 approved lender as long as the loan of money made by the Federal
6 Housing Administration or the United States Department of Veterans
7 Affairs approved lender is secured or covered by guarantees or
8 commitments or agreements to purchase or take over the same by the
9 Federal Housing Administration or the United States Department of
10 Veterans Affairs, credit card company, installment loan licensee,
11 or insurance company which is subject to regulation or supervision
12 under the laws of the United States or this state, who:

13 (a) For or in expectation of ~~consideration~~, an advance
14 fee from a borrower, procures, attempts to procure, arranges, or
15 attempts to arrange a loan of money for a borrower;

16 (b) For or in expectation of ~~consideration~~, an advance
17 fee from a borrower, assists a borrower in making an application to
18 obtain a loan of money;

19 (c) Is employed as an agent for the purpose of soliciting
20 borrowers as clients of the employer; or

21 (d) Holds himself or herself out, through advertising,
22 signs, or other means, as a loan broker;

23 (6) Loan brokerage agreement means any agreement for
24 services between a loan broker and a borrower; and

25 (7) Person means natural persons, corporations, trusts,

1 unincorporated associations, joint ventures, partnerships, and
2 limited liability companies.

3 Sec. 17. Section 45-346.01, Revised Statutes Cumulative
4 Supplement, 2008, is amended to read:

5 45-346.01 (1) A licensee may move its place of business
6 from one place to another within a county without obtaining a
7 new license if the licensee gives written notice thereof to the
8 director at least ten days prior to such move.

9 (2) A licensee shall maintain the minimum net worth
10 as required by section 45-346 while a license issued under the
11 Nebraska Installment Sales Act is in effect. The minimum net worth
12 shall be proven by an annual audit conducted by a certified public
13 accountant. A licensee shall submit a copy of the annual audit to
14 the director ~~within forty-five days after the audit is completed.~~
15 as required by section 45-348 or upon written request of the
16 director. If a licensee fails to maintain the required minimum net
17 worth, the Department of Banking and Finance may issue a notice of
18 cancellation of the license in lieu of revocation proceedings.

19 (3) The surety bond or a substitute bond as required by
20 section 45-346 shall remain in effect while a license issued under
21 the Nebraska Installment Sales Act is in effect. If a licensee
22 fails to maintain a surety bond or substitute bond, the licensee
23 shall immediately cease doing business and surrender the license
24 to the department. If the licensee does not surrender the license,
25 the department may issue a notice of cancellation of the license in

1 lieu of revocation proceedings.

2 (4) Until October 1, 2008, a licensee licensed prior to
3 September 1, 2007, may operate with no net worth or bonding
4 requirement as provided for at the time such licensee was
5 originally licensed.

6 Sec. 18. Section 45-348, Revised Statutes Cumulative
7 Supplement, 2008, is amended to read:

8 45-348 (1) Every licensee shall, on or before the first
9 day of October, pay to the director the sum of one hundred fifty
10 dollars for each license held as a license fee for the succeeding
11 year and submit such information as the director may require to
12 indicate any material change in the information contained in the
13 original application or succeeding renewal applications, including
14 a copy of the licensee's most recent annual audit. Failure to pay
15 such license fee within the time prescribed shall automatically
16 revoke such license.

17 (2) A licensee may voluntarily surrender a license at any
18 time by delivering to the director written notice of the surrender.
19 The Department of Banking and Finance shall issue a notice of
20 cancellation of the license following such surrender.

21 (3) If a licensee fails to renew its license and does
22 not voluntarily surrender the license pursuant to this section, the
23 department may issue a notice of expiration of the license to the
24 licensee in lieu of revocation proceedings.

25 Sec. 19. Section 45-922, Revised Statutes Cumulative

1 Supplement, 2008, is amended to read:

2 45-922 (1) The director may, following a hearing in
3 accordance with the Administrative Procedure Act, suspend or
4 revoke any license issued pursuant to the Delayed Deposit Services
5 Licensing Act if he or she finds:

6 (a) A licensee or any of its officers, directors,
7 partners, or members has knowingly violated the act or any rule,
8 regulation, or order of the director thereunder;

9 (b) A fact or condition existing which, if it had existed
10 at the time of the original application for such license, would
11 have warranted the director to refuse to issue such license;

12 (c) A licensee has abandoned its place of business for a
13 period of ~~sixty~~ thirty days or more;

14 (d) A licensee or any of its officers, directors,
15 partners, or members has knowingly subscribed to, made, or caused
16 to be made any false statement or false entry in the books and
17 records of any licensee, has knowingly subscribed to or exhibited
18 false papers with the intent to deceive the Department of Banking
19 and Finance, has failed to make a true and correct entry in the
20 books and records of such licensee of its business and transactions
21 in the manner and form prescribed by the department, or has
22 mutilated, altered, destroyed, secreted, or removed any of the
23 books or records of such licensee without the written approval of
24 the department or as provided in section 45-925; or

25 (e) A licensee has knowingly violated a voluntary consent

1 or compliance agreement which had been entered into with the
2 director.

3 (2) Except as provided in this section, a license shall
4 not be revoked or suspended except after notice and a hearing in
5 accordance with the Administrative Procedure Act.

6 (3)(a) If a licensee fails to renew its license as
7 required by section 45-910 and does not voluntarily surrender the
8 license pursuant to section 45-911, the department may issue a
9 notice of expiration of the license to the licensee in lieu of
10 revocation proceedings.

11 (b) If a licensee fails to maintain a surety bond as
12 required by section 45-906, the department may issue a notice of
13 cancellation of the license in lieu of revocation proceedings.

14 (4) Revocation, suspension, cancellation, or expiration
15 of a license shall not impair or affect the obligation of a
16 preexisting lawful contract between the licensee and any person,
17 including a maker of a check.

18 (5) Revocation, suspension, cancellation, or expiration
19 of a license shall not affect civil or criminal liability for
20 acts committed before the revocation, suspension, cancellation,
21 or expiration or liability for fines levied against the licensee
22 or any of its officers, directors, shareholders, partners, or
23 members, pursuant to section 45-925, for acts committed before the
24 revocation, suspension, cancellation, or expiration.

25 Sec. 20. Sections 1, 2, 3, 7, 8, 10, 11, 12, 13, 14,

1 16, 17, 18, 19, and 21 of this act become operative three calendar
2 months after the adjournment of this legislative session. The other
3 sections of this act become operative on their effective date.

4 Sec. 21. Original sections 8-101.01, 8-112, 8-209, 8-210,
5 8-602, 8-1001, 8-1001.01, and 45-190, Reissue Revised Statutes
6 of Nebraska, and sections 45-346.01, 45-348, and 45-922, Revised
7 Statutes Cumulative Supplement, 2008, are repealed.

8 Sec. 22. Original section 8-163, Reissue Revised Statutes
9 of Nebraska, sections 8-1,140, 8-355, and 21-17,115, Revised
10 Statutes Cumulative Supplement, 2008, and section 8-157.01, Reissue
11 Revised Statutes of Nebraska, as amended by section 1, Legislative
12 Bill 75, One Hundred First Legislature, First Session, 2009, are
13 repealed.

14 Sec. 23. Since an emergency exists, this act takes effect
15 when passed and approved according to law.